Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 895 (S/S) of 2001

State of Uttaranchal through
Executive Engineer, Irrigation
Department, Maneri Bhali Pariyojana
Khand II, Uttarkashi.

..... Petitioner

Versus

1. Presiding Officer Labour Court, Dehradun,
2. Balbeer Singh S/o Sri Mangal Singh,
   R/o Nagni Chinyalisaur, District- Uttarkashi.

..... Respondents

Learned Chief Standing Counsel for the petitioner
Sri Gopal Narain, learned counsel for the respondent No. 2.

Date: July 21, 2005.

Hon'ble P.C. Verma, J.

The petition has been filed by the petitioner impugning the award dated 14.06.2000 made by the Labour Court, Dehradun In Industrial Dispute Case Nos. 47 of 2000 holding respondent No. 2 workman of the petitioner and directed the reemployment of the workman in service but because of delay in filing the claim petition, the Labour Court denied the back wages to the respondent No. 2 and awarded Rs. 5,000/- as compensation in lump sum and Rs. 1,000/- towards cost against the petitioner.

2. Brief facts giving rise to the petitioner writ petition are that respondent No. 2 Bharat Singh was engaged in service on 27.1.1989 as cleaner in the department of petitioner and he continued upto 29.6.1992 but on 30.6.1992 his services were terminated without any prior notice which is in violation of the provisions contained

under Sec. 6- N of the Industrial Disputes Act, 1947. Therefore, the respondent No. 2 raised the dispute under Sec. 4-K of the U.P. Industrial Disputes Act 1947. The industrial dispute decided by the impugned award was referred in the following terms:-

> "Whether the termination of the services of Balbir Singh S/o Mangal Singh, cleaner by the employer from 30.06.1992 is illegal/unjustified? If so, to which benefit/relief the applicant/workman is entitled to and to what extent?"

3. The Labour Court issued notices to the parties. The Opp. Parties filed their written objections and led their evidence before the Labour Court. After hearing the parties the Labour Court passed the aforesaid order. Being aggrieved by the order of Labour Court, the petitioner has preferred the present writ petition.

4. I have heard learned counsel for the parties and perused the material on record as well as the impugned award. The contention of the petitioner is that the respondent No. 2 engaged to work on muster roll in the Irrigation Department and there was no continuity in the service of respondent No. 2. The petitioner could not file any documentary evidence regarding engagement of respondent No. 2 in the Department and contended that the termination of the petitioner does not come within the purview of retrenchment. On the other hand the respondent No. 2 relied on the case of the Apex Court in the *case State of U.P. and another versus Rajendra Singh Butola and another,* reported in 2000 (84) FLR 896 in which the Hon'ble Supreme Court observed that in the light of the concurrent finding of facts reached by the trial court as well as by the High Court, it becomes clear that though the appellants contended that the workman was a daily wager

and therefore, the provision of Section 6-N of the U.P. Industrial Disputes Act, 1947, did not apply there is no escape from the conclusion that the workman had worked for four years as clearly established and if he was to be terminated due to any exigencies of service, the procedure for retrenchment was required to be followed. As the condition precedent to such retrenchment was not complied with, the order of reinstatement granted by the Labour Court could not be found fault with. In view of the aforesaid law laid down by the Apex Court the Labour Court rightly held that the respondent was terminated without applying the procedure for retrenchment and the same was in violation of provisions of Section 6-N of the U.P. Industrial Disputes Act.

5. Learned counsel for the petitioner has further argued that the claim petition has been filed after a period of 8 years and, as such, the same is not maintainable as it is highly belated.

In the case Sapan Kumar Pandit versus U.P. State Electricity Board and others reported in 2001 SC-SLR 658, the Apex Court has held that it is useful to refer to a three Judges Bench decision of this Court as it related to the scope of the very same provision i.e. Section 4 K of the U.P. Act. In M/s Western India Watch Co. Ltd. versus the Western India Watch Co. Workers Union, AIR 1970 SC 1205, learned Judges made the following observations:

> "Therefore, the expression "at any time though seemingly without any limits, is governed by the context in which it appear. Ordinarily, the question of marking a reference would arise after conciliation proceedings have been gone. Through and the conciliation officer has made a failure report. But the Government need not wait until such a procedure has

> been completed. In an urgent case, it can, "at any time, i.e. even when such proceedings have not begun or are still pending, decide to refer the dispute for adjudication. The expression "at any time" thus takes in such cases as where the Government decides to make a reference without waiting for conciliation proceedings to begin or to be completed. As already stated, the expression "at any time" in the context in which it is used postulates that a reference can only be made if an industrial dispute exists or is apprehended. No reference is contemplated by the section when the dispute is not an industrial dispute, or even if it is so, it no longer exists or is not apprehended, for instance, where it is already adjourned or in respect of which there is an agreement or a settlement between the parties or where the industry in question is no longer in existence."

6. In my opinion, the Labour Court has rightly moulded the award to the extent of Rs. 5,000/- towards compensation in lieu of the back wages to the respondent No.2 on account of the delay in filing the claim petition and the finding on this point requires no interference under Article 226 of the Constitution of India.

7. The learned counsel for the petitioner further contended that work of project has been finished and there is no need of workmen. On the contrary, the workman has set up his case that the work still exists and the construction work of the project has been entrusted to the T.H.D.C. this fact has not been rebutted by any cogent evidence by the employers. In absence of any cogent evidence by the employers the Labour Court rightly held that the construction worked still exists in the project and as such fine no error or infirmity in the order passed by the Labour Court.

8. The workman has established that he was continuously working from 27.1.1989 to 30.6.1992 with

the Department and before terminating his services, he has completed 240 working days. Thus, provisions of Section 6N of the U.P. Industrial Disputes Act, 1947 have not been complied with by the employer and, therefore, termination order is wholly illegal.

9. In view of the findings recorded above, I do not find any infirmity in the order passed by the Labour Court. The findings recorded by the Labour Court are findings of fact and this Court, therefore, in exercise of powers under Article 226 of the Constitution of India, declines to interfere with the findings recorded by the Labour Court.

10. Accordingly, the grounds of challenge fail and writ petition is dismissed. No order as to costs.

(P.C. Verma, J.)

21.07.2005
P.Singh